

1 ALEXIS COLL-VERY (SBN 212735)
2 acoll-very@stblaw.com
3 MARISSA LAMBERT (SBN 312567)
4 marissa.lambert@stblaw.com
5 P. CASEY MATHEWS (SBN 311838)
6 casey.mathews@stblaw.com
7 SIMPSON THACHER & BARTLETT LLP
8 2475 Hanover Street
9 Palo Alto, California 94304-1114
10 Telephone: (650) 251-5000
11 Facsimile: (650) 251-5002

12 *Pro Bono Attorneys for Plaintiff ACLU*

13 MELISSA GOODMAN (SBN 289464)
14 mgoodman@aclusocal.org
15 AMERICAN CIVIL LIBERTIES UNION
16 FOUNDATION OF SOUTHERN CALIFORNIA
17 1313 West 8th Street
18 Los Angeles, California 90017
19 Telephone: (213) 977-9500
20 Facsimile: (213) 977-5299

21 *Attorneys for Plaintiffs ACLU and SEIU-UHW*

22 UNITED STATES DISTRICT COURT
23 FOR THE NORTHERN DISTRICT OF CALIFORNIA
24 OAKLAND DIVISION

25 AMERICAN CIVIL LIBERTIES UNION and
26 SEIU-UHW,

27 Plaintiffs,

28 v.

29 ERIC D. HARGAN, Acting Secretary of the U.S.
30 Department of Health and Human Services; R.
31 ALEXANDER ACOSTA, Secretary of Labor; and
32 STEVEN T. MNUCHIN, Secretary of the Treasury,
33 in their official capacities,

34 Defendants.

35 Case No. 4:17-cv-05772-SBA

36 **PLAINTIFFS' MOTION FOR CASES
37 TO BE CONSIDERED RELATED**

38 [N.D. Cal. Civ. L.R. 3-12, 7-11]

1 STATE OF CALIFORNIA, by and through Attorney
 2 General Xavier Becerra,

Case No. 4:17-cv-05783-HSG

3 Plaintiff,

4 v.

5 ERIC D. HARGAN, in his Official Capacity as
 6 Acting Secretary of the U.S. Department of Health &
 7 Human Services; U.S. DEPARTMENT OF
 8 HEALTH AND HUMAN SERVICES; R.
 9 ALEXANDER ACOSTA, in his Official Capacity as
 Secretary of the U.S. Department of Labor; U.S.
 DEPARTMENT OF LABOR; STEVEN
 MNUCHIN, in his Official Capacity as Secretary of
 the Treasury; U.S. DEPARTMENT OF THE
 TREASURY; DOES 1-100,

10 Defendants.

11
 12 TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

13 Pursuant to Civil Local Rules 3-12 and 7-11, Plaintiffs hereby move the Court for an Order
 14 relating *American Civil Liberties Union et al. v. Eric D. Hargan et al.*, No. 4:17-cv-05772-SBA
 15 (“ACLU”) to *State of California v. Eric D. Hargan et al.*, No. 4:17-cv-05783-HSG (“California”)
 16 for consideration before Judge Haywood S. Gilliam. Plaintiffs’ counsel has conferred with
 17 counsel for Defendants and the attorneys representing the California Attorney General. The
 18 California Attorney General does not oppose relating the cases; counsel for Defendants has not
 19 consented. Declaration of Alexis Coll-Very at ¶3-4.

20 **APPLICABLE RULE**

21 Civil Local Rule 3-12 provides, in pertinent part: “An action is related to another when: (1)
 22 The actions concern substantially the same parties, property, transaction or event; and (2) It
 23 appears likely that there will be an unduly burdensome duplication of labor and expense or
 24 conflicting results if the cases are conducted before different Judges.”

25 **THE RELATIONSHIP BETWEEN ACLU AND CALIFORNIA**

26 ACLU is related to *California* because they involve substantially the same parties,
 27 transactions, and events. *See* Civ. L.R. 3-12(a)(1). If the cases are conducted before different
 28

1 judges, there will be a burdensome duplication of labor and expense, as well as the potential for
 2 conflicting results. *See* Civ. L.R. 3-12(a)(2).

3 **I. *ACLU and California involve substantially the same transaction and events.***

4 On October 6, 2017, all of the named plaintiffs in both *ACLU* and *California* separately
 5 filed complaints in the U.S. District Court for the Northern District of California, arguing that the
 6 Trump Administration's issuance of two Interim Final Regulations ("IFRs") violates the First and
 7 Fifth Amendments to the U.S. Constitution and the Administrative Procedure Act. The effect of
 8 the IFRs is to allow any employer or university to opt out of the contraceptive coverage
 9 requirements of the Patient Protection and Affordable Care Act (ACA) based on a religious or
 10 moral objection to contraception. The IFRs significantly alter the current narrow religious
 11 exemption and accommodation scheme and craft an entirely new moral exemption to the mandate
 12 that insurance cover contraception without cost-sharing.

13 *ACLU* and *California* stem from the same transaction or occurrence: the promulgation and
 14 consequences of the Trump Administration's *Religious Exemptions and Accommodations for*
 15 *Coverage of Certain Preventative Services Under the Affordable Care Act* (82 Fed. Reg. 47,792
 16 (2017)) and *Moral Exemptions and Accommodations for Coverage of Certain Preventative*
 17 *Services under the Affordable Care Act* (82 Fed. Reg. 47,838 (2017)). In both actions, the
 18 plaintiffs assert that the new IFRs violate (1) the Establishment Clause of the First Amendment by
 19 advancing and endorsing a particular set of religious beliefs and allowing entities to use their
 20 religious beliefs to harm third parties, (2) the Equal Protection Clause of the Fifth Amendment by
 21 targeting health benefits women need for discriminatory treatment, imposing and sanctioning sex
 22 stereotypes, and imposing disabilities and burdens on women that deny them equal participation in
 23 society and (3) the Administrative Procedure Act (APA) by implementing rules that are arbitrary,
 24 capricious, and an abuse of discretion and that are otherwise not in accordance with law.
 25 Moreover, both cases request nearly identical declaratory and injunctive relief.

26 //

27 //

28 //

1 **II. *ACLU* and *California* involve substantially the same parties.**

2 The defendants in both *ACLU* and *California* are nearly identical: Eric D. Hargan, Acting
 3 Secretary of the U.S. Department of Health and Human Services,¹ R. Alexander Acosta, Secretary
 4 of Labor, and Steven Mnuchin, Secretary of the Treasury, in their official capacities. While
 5 *California* names additional “Doe” defendants, the significant overlap in parties between *ACLU*
 6 and *California* satisfies the requirements of Civ. L.R. 3-12(a)(1).

7 In addition, the *ACLU* case involves two institutional plaintiffs—the American Civil
 8 Liberties Union, a non-partisan public-interest membership organization with over 1.5 million
 9 members, many of whom are Californians, and the SEIU-UHW, a labor organization with over
 10 90,000 members who are health care workers in California. These plaintiffs seek to protect their
 11 members who will lose their contraceptive-coverage under the unlawful IFRs. In *California*,
 12 Attorney General Xavier Becerra represents the State of California, protecting its own proprietary
 13 interests, as well as all California citizens, protecting their constitutional and statutory rights. In
 14 short, both *ACLU* and *California* seek to protect, in large part, the same women whose
 15 constitutional and statutory protections are threatened by the Trump Administration’s actions. The
 16 confluence of interested parties satisfies the requirements of Civ. L.R. 3-12(a)(1).

17 **III. Relating *ACLU* to *California* will conserve judicial resources and avoid inconsistent
 18 results.**

19 These cases raise identical legal questions. Litigation before different judges will
 20 undoubtedly lead to unduly burdensome duplication of labor and expense by plaintiffs,
 21 defendants, and judges. Because Judge Armstrong has recused herself from the *California* case,
 22 both cases should proceed before Judge Gilliam. Relating these cases thus satisfies Civ. L.R. 3-
 23 12(a)(2).

24 //

25 //

26 //

27 ¹ Pursuant to Fed. R. Civ. P. 25(d), Eric. D. Hargan is substituted for Don J. Wright as a defendant
 28 in his official capacity as Acting Secretary of the U.S. Department of Health and Human Services.

CONCLUSION

For the reasons set forth above, we respectfully request that the Court relate the *ACLU* action and the *California* action.

Dated: November 1, 2017

SIMPSON THACHER & BARTLETT LLP

By Alexis Coll-Very ^{mp}
ALEXIS COLL-VERY (SBN 2)2735)

SIMPSON THACHER & BARTLETT LLP
2475 Hanover Street
Palo Alto, California 94304-1114
Telephone: (650) 251-5000
Facsimile: (650) 251-5002
Email: acoll-very@stblaw.com

Pro Bono Attorneys for ACLU Plaintiffs